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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,934	11/13/2001	Ann M. Nichols	KCC 4729.1 (16,210.1)	8461

321 7590 04/04/2006

SENNIGER POWERS  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER
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JOHNSON, JERROLD D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/010,934	Applicant(s) NICHOLS ET AL.	
	Examiner Jerrold Johnson	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-13, 15, 17-19, 21, 23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-13, 15, 17-19, 21, 23 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-13, 15, 17-19, 21, 23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones US 3,557,853 in view of McCormick US 5,844,771 and Perecman US 4,502,599, or, in the alternative, McCormick US 5,844,771 in view of Jones US 3,557,853 and Perecman US 4,502,599.

Jones discloses a package comprising a plural number of individually wrapped absorbent feminine care articles and a reclosable packaging comprising a middle portion, a back portion, a flexible pocket of one piece construction having a hollow interior, an opening into the hollow interior, a flap attached to the pocket, and a reclosable closure on the flap for releasably securing the flap in its closed position on the exterior area of the middle portion of the pocket.

The reclosable closure is not adhesive. However, the reclosable closure is spaced from a distal edge of the flap. Additionally, the reclosable closure does allow for some adjustability of the position of the flap with respect to the middle portion of the

pocket. The reclosable closure is not, however, releasably securable by said releasable closure substantially anywhere on said exterior area of the middle portion of the pocket.

Jones does not explicitly show "individually wrapped" feminine care products, as has not been argued by the Applicant prior to this Office Action. However, Jones does disclose unused feminine care products, and feminine care products are known to be provided in an individually wrapped configuration to preserve the sterility of the product. Accordingly, it would have been obvious to one of ordinary skill in the art to provide the package of Jones with individually wrapped feminine care products.

McCormick in col. 3, lines 25-46 describes various configurations and materials for packages designed to hold a plurality of feminine care products. The teachings of McCormick explicitly provide evidence of alternative configurations and materials that could have been used in the package of Jones. The exemplary packages of McCormick (like that of the present application and that of Jones) are of a reclosable packaging of an envelope form having a middle portion, a back portion, a flexible pocket of one piece construction having a hollow interior, an opening into the hollow interior, a flap attached to the pocket, and a reclosable closure on the flap for releasably securing the flap in its closed position on the exterior area of the middle portion of the pocket.

Additionally, McCormick in col. 3, lines 34-36 discloses the use of an adhesive for use as the reclosable closure, but does not show this configuration in his drawings.

Perecman, in particular in Fig. 5, discloses a packaging consistent with the description suggested by McCormick in col 3, lines 34-36. The package includes a resealable bag having an adhesive reclosable closure that is both spaced from the

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distal end of the flap and that is releasably securable by said releasable closure substantially anywhere on said exterior area of the middle portion of the pocket, as claimed.

Accordingly, it would have been obvious to one of ordinary skill in the art to have provided the package of Jones in the configurations and materials suggested by McCormick and Perecman so as to provide a packaging for feminine care products having a low labor and materials cost to manufacture, while continuing to provide the intended functionality.

With respect to dependent claims 2-13,15,17 and 18, none of the sizes set forth in these claims have been indicated as critical, and it would be within the purview of a skilled artisan to optimize these sizes to meet the necessary criteria of the products use, e.g. estimated number of times of reclosure.

With respect to the type of adhesive used, those set forth in claims 11 and 12 are among many considered to be art recognized equivalents and their use would similarly be obvious to a skilled artisan.

With respect to the type of feminine care product, those set forth in claims 17 and 18 fall within the categories set forth in Jones and Perecman.

Alternatively:

McCormick in col. 3, lines 25-46 describes various configurations and materials for packages designed to hold a plurality of feminine care products. The exemplary packages are of an envelope form like that of the present application of a

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reclosable packaging comprising a middle portion, a back portion, a flexible pocket of one piece construction having a hollow interior, an opening into the hollow interior, a flap attached to the pocket, and a reclosable closure on the flap for releasably securing the flap in its closed position on the exterior area of the middle portion of the pocket. Additionally, McCormick in col. 3, lines 34-36 discloses the use of an adhesive for use as the reclosable closure. McCormick discloses the use of the package 10 with a supply of feminine care products.

Jones provides evidence in his drawings and in his specification how the package 10 disclosed by McCormick could be used in the manner McCormick describes in his specification (for the storage of a supply of feminine care products), but as is not shown explicitly in the drawing figures of McCormick.

Again, neither Jones nor McCormick explicitly disclose "individually wrapped" feminine care products, but both disclose unused feminine care products. And as was previously stated, it is well known that feminine care products are provided in individually wrapped and unwrapped configurations. Individually wrapped feminine care products are known to provide additional protection from contamination. The applicant did not contest this assertion. Accordingly, as both configurations are well known and it would have been obvious to one of ordinary skill in the art to use either individually wrapped or unwrapped feminine care products in the package of McCormick.

Perecman evidences how a package as suggested by McCormick (of a package constructed from plastic materials with an adhesive closure) could be configured in a manner that produces a package having low cost and a secure reclosable closure. It is

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noted that McCormick describes that the package 10 can be configured in many shapes, and that the package 10 is preferably "moisture resistant" and "inexpensive." Perecman clearly shows a configuration consistent with the suggestions of McCormick.

Accordingly, it further would have been obvious to provide the package of McCormick with the configuration suggested by McCormick of a plastic material having an adhesive closure, and as is explicitly taught by Perecman, so as to provide an inexpensive package constructed with an inexpensive reclosable closure, thus minimizing manufacturing costs.

Re claims 2-13,15,17 and 18, none of the sizes set forth in these claims have been indicated as critical, and it would be within the purview of a skilled artisan to optimize these sizes to meet the necessary criteria of the products use, e.g. estimated number of times of reclosure.

With respect to the type of adhesive used, those set forth in claims 11 and 12 are among many considered to be art recognized equivalents and their use would similarly be obvious to a skilled artisan.

With respect to the type of feminine care product, those set forth in claims 17 and 18 fall within the categories set forth in Jones and Perecman.

### **Response to Arguments**

Applicant has only argued the first of the two rejections. Applicant's arguments are specifically drawn to the use of an adhesive closure on the package of Jones. This argument is not persuasive, particularly since no such modification was suggested in the prior Office Action. The first rejection of this and the prior Office Action sets forth that the package of Jones could be produced in a less expensive form, as taught by McCormick, through the use of other materials. Nowhere was it suggested that the singular teaching of an adhesive closure as taught by McCormick was to be applied to the package of Jones for the modification thereof. In contrast, the Examiner submits that producing products in less expensive configurations is now the norm in the marketplace, and that McCormick and Perecman provide the teachings necessary so as to suggest to one of ordinary skill in the art how the entirety of the package of Jones can be produced in a less expensive configuration with plastic materials and an adhesive closure without a loss of functionality.

Applicant's suggestion that adhesives are not less expensive than hook and loop fasteners is noted, but is not persuasive.

It is noted that with respect to the second of the two rejections the Applicant has presented no specific arguments. That rejection, McCormick in view of Jones and Perecman, as was the first rejection, Jones in view of McCormick and Perecman, is repeated herein. The second rejection does not rely on a modification of McCormick in view of the teachings of either Jones or Perecman. Jones merely provides evidence of



how the package of McCormick would be used as McCormick intends (but does not show in his drawings), and Perecman merely provides evidence of a common configuration of the type of package that McCormick suggests (one that is preferably moisture resistant, and inexpensive and that includes an adhesive closure).

Again, the Applicant provided no arguments directed specifically to this rejection.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDJ 

  
Mickey Yu  
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